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7 UNITED STATES DISTRICT COURT

8 OF

9 SOUTHERN INDIANA

FILED

07/31/2023

**U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
Roger A.G. Sharpe, Clerk**

10 ANDRE NESBIT

11 Plaintiff,

12 vs.

13 The City of Indianapolis, Speedway LLC

14 Defendants,

Case No.: 1:23-cv-00702-JRS-MKK

Reply in Support of the Plaintiff's Motion for
Default Judgment

15 Plaintiff, Andre Nesbit, submits the following Reply to the Defendants, The City of
16 Indianapolis, Opposition to Plaintiff's motion for Default Judgment.
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1 **A. LEGAL AUTHORITY**

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3 **Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986):** (1) the possibility of
4 prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of
5 the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute
6 concerning material facts, (6) whether the default was due to excusable neglect, and (7) the
7 strong policy underlying the [FRCP] favoring decisions on the merits.
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11 **B. BACKGROUND**

12 The defendants were served the Complaint on 6/30/2023 pursuant to Rule 5 of the
13 Rules of Civil Procedure.
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15 The Defendants have failed to plead or otherwise defend against the plaintiff’s
16 Complaint in 21 days pursuant to Rule 12 of the rules of Civil Procedure.
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20 **C. The possibility of prejudice to the plaintiff**

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22 If the default judgment is not entered, it would prejudice the plaintiff. The defendant
23 had an adequate amount of time to respond and the court has not granted either Defendant
24 an extension of time.
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1 Additionally, the defendant is stating that the order granting the plaintiff Leave to
2 file a second Amended Complaint also somehow extends the time for an answer. This is not
3
4 true.

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6 An attorney cannot deputize himself, through his own interpretation, to grant himself
7
8 an extension of time without an order from the presiding judge. No order has been granted.
9 Additionally, the court has not granted the Defendants motion to screen the complaint, for
10
11 the Defendants motion is deficient in many ways.

12
13 Therefore, the defendants are in violation of the rules. They **ONLY** have 21 days to
14
15 respond to the complaint without Leave from court.

16 **D. The merits of plaintiff's substantive claim**
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18 All allegations or facts in the plaintiffs Amended complaint are deemed to be true.
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20 Additionally, the plaintiff has filed a supporting Declaration and Exhibit List.
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22 **E. The Sum of Money at Stake in the Action**
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24 The amount of money at stake is a fair amount of money. Additionally, The nature of
25
26 this case with punitive damages.
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1 The amount of money at stake is compensatory in nature for the damages
2 sustained by the plaintiff. Additionally, this is an amount of money the Defendants
3 will be able to pay.
4

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6 **F The Defendant has not Disputed any material facts**
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8 The Defendants have not disputed any material facts. Neither Defendant has filed a
9 responsive pleading.
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12 **G. Whether the default was due to excusable neglect**
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14 Both Parties have appeared in this case and have had over 21 one days to respond
15 and have done so with no excuse, only their **WILLFUL** neglect.
16

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18 **H. (7) The strong policy underlying the [FRCP] favoring decisions on the merits.**
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20 The merits of the plaintiff's well pleaded complaint are strong and have not been
21 disputed.
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23 The defendant has not denied any allegations. Thus, they committed the act.
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1 **I. Screening**

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3 There is no statute that states the court has a duty to screen, but in any case, a
4 screening does not affect any deadlines unless (i) the complaint was dismissed or (ii) the
5 Defendant's receives Leave from court.
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8 Neither has occurred in this case.
9

10 **Conclusion**

11 For all the foregoing reasons and supporting facts and authorities, it is respectfully
12 requested that the Court: (i) to GRANT the Plaintiff's Motion for a Default Judgment against
13 The City of Indianapolis and Speedway, LLC and (ii) Deny any requests for an extension of
14 time.
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21 Dated: July 27th, 2023

Respectfully Submitted

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23 *Andre Nesbit*
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25 _____
26 Attorney Name
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CERTIFICATE OF ELECTRONIC SERVICE

I certify that this Reply in Support of the Plaintiff's Motion for Default Judgment was sent to each person, The City of Indianapolis and Speedway LLC by electronic service to attorneys Haley Johnston and Thomas L. Davis at their respective email addresses: hjohnston@fbtlaw.com and tdavis@fbtlaw.com; and Jessica Reagan Gastineau and Michael Brian Coppinger, II at their respective email addresses: jess.gastineau2@indy.gov and brian.coppinger2@indy.gov.

Dated: July 31st, 2023

Respectfully Submitted

Andre Nesbit

Attorney Name